

(c) The petitioner shall have the burden of establishing that a proposed temporary change would comply with paragraphs (1) and (2) of subdivision (b). If the board determines that petitioner has established a prima facie case, the burden of proof shall shift to any party that has filed a comment pursuant to subdivision (f) of Section 1726 to prove that the proposed temporary change would not comply with paragraphs (1) and (2) of subdivision (b). The board may make a determination required by this subdivision without a hearing.

(d) In reviewing a petition for a temporary change, the board shall not modify any term or condition of the petitioner's permit or license, including those terms that protect other legal users of water, fish, wildlife, and other instream beneficial uses, except as necessary to carry out the temporary change in accordance with this article.

(e) In applying the standards set forth in paragraphs (1) and (2) of subdivision (b), the board shall not deny, or place conditions on, a temporary change to avoid or mitigate impacts that are not caused by the temporary change. Neither the Department of Fish and Game, nor any other state agency that comments on the proposed temporary change, shall propose conditions to mitigate effects on fish, wildlife, or other instream beneficial uses caused by factors other than the proposed temporary change. This subdivision does not limit the board, the Department of Fish and Game, or any other state agency, in proceedings pursuant to any provision of law other than this article.

§1728.

For the purposes of this article, a temporary change means any change of point of diversion, place of use, or purpose of use involving a transfer or exchange of water or water rights for a period of one year or less. The one year period does not include any time required for monitoring, reporting, or mitigation before or after the temporary change is carried out. If, within a period of one year or less, the water involved in the temporary change is moved to off-stream storage outside the watershed where the water originated, the change shall be considered a temporary change, and the water moved to off-stream storage outside the watershed where the water originated may be put to beneficial use in the place of use and for the purpose of use specified in the board's order approving the temporary change either during or after that period.

§1729.

A proposed temporary change under this article shall be exempt from the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code.

§1731.

Following the expiration of the temporary change period, all rights shall automatically revert to the original holder of the right without any action by the board.

§1732.

The petitioner shall not initiate or increase the use of groundwater to replace surface water transferred pursuant to this article, except in compliance with Sections 1745.10 and 1745.11.

§1735.

The board may consider a petition for a long-term transfer of water or water rights involving a change of point of diversion, place of use, or purpose of use. A long-term transfer shall be for any period in excess of one year.

§1736.

The board, after providing notice and opportunity for a hearing, including, but not limited to, written notice to, and an opportunity for review and recommendation by, the Department of Fish and Game, may approve such a petition for a long-term transfer where the change would not result in substantial injury to any legal user of water and would not unreasonably affect fish, wildlife, or other instream beneficial uses.

§1737.

Following the expiration of the long-term transfer period, all rights shall automatically revert to the original holders of the right without any action by the board.

§1740.

Any water right determined under a court decree issued pursuant to Chapter 3 (commencing with Section 2500) of Part 3, after January 1, 1981, shall be transferable pursuant to this chapter and Chapter 10 (commencing with Section 1700). The court having the appropriate jurisdiction over the decreed rights may enter a supplemental decree modifying any rights involved upon motion of the board or any party with a vested water right.

§1745.

As used in this article, the following terms have the following meanings:

(a) "Person" includes a public agency.

(b) "Water supplier" means a local public agency or private company supplying or storing water, or a mutual water company.

§1745.02.

A water supplier may, for a consideration to be specified in the contract, contract with persons entitled to service within the supplier's service area to reduce or eliminate for a specified period of time their use of water supplied by the water supplier.

§1745.03.

Services performed under a contract entered into pursuant to this chapter or Chapter 3.6 (commencing with Section 380) of Division 1 which is offered generally to all persons entitled to water service from the water supplier are public services generally provided by the public agency for purposes of paragraph (3) of subdivision (a) of Section 1091.5 of the Government Code.

§1745.04.

A water supplier may contract with a state drought water bank or with any other state or local water supplier or user inside or outside the service area of the water supplier to transfer, or store as part of a transfer, water if the water supplier has allocated to the water users within its service area the water

available for the water year, and no other user will receive less than the amount provided by that allocation or be otherwise unreasonably adversely affected without that user's consent.

§1745.05.

(a) Water stored by the water supplier and water made available from either of the following sources may be transferred by the water supplier pursuant to Section 1745.04: (1) Conservation or alternate water supply measures taken by individual water users or by the water supplier. (2) Water developed pursuant to a contract by a water user to reduce water use below the user's allocation or to eliminate the use of water during the water year, including a contract to grow crops without the use of water from the water supplier, to fallow land, or to undertake other action to reduce or eliminate water use.

(b) The amount of water made available by land fallowing may not exceed 20 percent of the water that would have been applied or stored by the water supplier in the absence of any contract entered into pursuant to this article in any given hydrological year, unless the agency approves, following reasonable notice and a public hearing, a larger percentage.

§1745.06.

A water supplier may transfer water pursuant to Section 1745.04 whether or not the water proposed to be transferred is surplus to the needs within the service area of the water supplier.

§1745.07.

No transfer of water pursuant to this article or any other provision of law shall cause a forfeiture, diminution, or impairment of any water rights. A transfer that is approved pursuant to this article or any other provision of law is deemed to be a beneficial use by the transferor under this code.

§1745.08.

This article is in addition to, and not a limitation on, the authority of any public agency under any other provision of law, including, but not limited to, Article 1 (commencing with Section 1725).

§1745.09.

Nothing in this article does any of the following:

- (a) Creates in any person a right to require any water supplier to enter into a contract providing for the reduction or elimination of water use or for the transfer of water.
- (b) Creates in any person reducing water use any interest in the water rights of the water supplier.
- (c) Limits or otherwise affects the jurisdiction of any regulatory public agency over water transfers.
- (d) Makes any change in existing water rights.

§1745.10.

A water user that transfers surface water pursuant to this article may not replace that water with groundwater unless the groundwater use is either of the following:

- (a) Consistent with a groundwater management plan adopted pursuant to state law for the affected area.
- (b) Approved by the water supplier from whose service area the water is to be transferred and that water supplier, if a groundwater management plan has not been adopted, determines that the

transfer will not create, or contribute to, conditions of long-term overdraft in the affected groundwater basin.

§1745.11.

Nothing in this article prohibits the transfer of previously recharged groundwater from an overdrafted groundwater basin or the replacement of transferred surface water with groundwater previously recharged into an overdrafted groundwater basin, if the recharge was part of a groundwater banking operation carried out by direct recharge, by delivery of surface water in lieu of groundwater pumping, or by other means, for storage and extraction.

§1810.

Notwithstanding any other provision of law, neither the state, nor any regional or local public agency may deny a bona fide transferor of water the use of a water conveyance facility which has unused capacity, for the period of time for which that capacity is available, if fair compensation is paid for that use, subject to the following:

(a) Any person or public agency that has a long-term water service contract with or the right to receive water from the owner of the conveyance facility shall have the right to use any unused capacity prior to any bona fide transferor.

(b) The commingling of transferred water does not result in a diminution of the beneficial uses or quality of the water in the facility, except that the transferor may, at the transferor's own expense, provide for treatment to prevent the diminution, and the transferred water is of substantially the same quality as the water in the facility.

(c) Any person or public agency that has a water service contract with or the right to receive water from the owner of the conveyance facility who has an emergency need may utilize the unused capacity that was made available pursuant to this section for the duration of the emergency.

(d) This use of a water conveyance facility is to be made without injuring any legal user of water and without unreasonably affecting fish, wildlife, or other instream beneficial uses and without unreasonably affecting the overall economy or the environment of the county from which the water is being transferred.

§1811.

As used in this article, the following terms shall have the following meanings:

(a) "Bona fide transferor" means a person or public agency as defined in Section 20009 of the Government Code with a contract for sale of water which may be conditioned upon the acquisition of conveyance facility capacity to convey the water that is the subject of the contract.

(b) "Emergency" means a sudden occurrence such as a storm, flood, fire, or an unexpected equipment outage impairing the ability of a person or public agency to make water deliveries.

(c) "Fair compensation" means the reasonable charges incurred by the owner of the conveyance system, including capital, operation, maintenance, and replacement costs, increased costs from any necessitated purchase of supplemental power, and including reasonable credit for any offsetting benefits for the use of the conveyance system.

(d) "Replacement costs" mean the reasonable portion of costs associated with material acquisition for the correction of unrepairable wear or other deterioration of conveyance facility parts

which have an anticipated life which is less than the conveyance facility repayment period and which costs are attributable to the proposed use.

(e) "Unused capacity" means space that is available within the operational limits of the conveyance system and which the owner is not using during the period for which the transfer is proposed and which space is sufficient to convey the quantity of water proposed to be transferred.

§1812.

The state, regional, or local public agency owning the water conveyance facility shall in a timely manner determine the following:

(a) The amount and availability of unused capacity.

(b) The terms and conditions, including operation and maintenance requirements and scheduling, quality requirements, term or use, priorities, and fair compensation.

§1812.5.

(a) The Legislature finds and declares all of the following:

(1) This section is an extraordinary measure being taken only because the proposed transfer of conserved water from the Imperial Irrigation District to the San Diego County Water Authority is a matter of statewide interest in that it addresses a significant need for water in the southern state through the conservation of water now being consumed there. The Legislature further finds and declares that this section is not to be regarded as setting a precedent for any other legislative action.

(2) California's use of Colorado River water is limited to its basic annual apportionment of 4.4 million acre-feet, plus one-half of any excess or surplus water from the Colorado River. However, California continues to use up to 5.3 million acre-feet by relying on surpluses and apportioned, but unused water within the Colorado River Basin, which is not a reliable water supply. The Secretary of the Interior has strongly urged California to develop a plan to enable it to live within its basic apportionment of 4.4 million acre-feet from the Colorado River.

(3) It is of vital state interest that every effort be made to ensure that the Colorado River Aqueduct continues to operate at its full capacity at fair and reasonable terms in order to minimize statewide disruptions from diminishing Colorado River supplies.

(4) Negotiations assisted by the director are underway in 1997 between the Metropolitan Water District of Southern California and the San Diego County Water Authority for the development of a long-term wheeling agreement whereby the San Diego County Water Authority would use the Colorado River Aqueduct to wheel conserved water from the Imperial Irrigation District.

(b) The director shall assist the Colorado River Board and the six California water agencies that derive water from the Colorado River in developing a plan to ensure that California can live within its entitlement of 4.4 million acre-feet of water annually and to ensure that the needs of southern California for Colorado River water are met.

(c) (1) Notwithstanding any other provision of law, with regard to the proposed transfer of conserved water from the Imperial Irrigation District to the San Diego County Water Authority, using the Metropolitan Water District of Southern California's water conveyance facilities, including the Colorado River Aqueduct, if the San Diego County Water Authority and the Metropolitan Water District of Southern California have not reached an agreement in principle on the terms and conditions of the transfer of conserved water using the Metropolitan Water District of Southern California's water conveyance facilities on or before August 15, 1997, the director shall issue a

formal recommendation within 30 days from that date, with regard to the appropriate terms and conditions of the transfer.

(2) The director, in issuing a recommendation regarding appropriate terms and conditions of the transfer, shall make those determinations prescribed by Section 1812.

(3) If the director's recommendations prescribed by Section 1812 are unacceptable to either the San Diego County Water Authority or the Metropolitan Water District of Southern California, that party may request a formal mediation process. If both parties agree to participate in the formal mediation process, the parties shall commence mediation within one month after the mediation request is made. If the parties cannot agree on a mediator, the director shall appoint a mediator or the director may serve as mediator. The San Diego County Water Authority and the Metropolitan Water District of Southern California shall reimburse the state for any General Fund money used in mediation entered into pursuant to this paragraph.

(d) No action taken pursuant to this section shall injure any legal user of water, and there shall be no shifting of costs for actions taken pursuant to this section to water users in any county in the State of California.

(e) This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 1999, deletes or extends that date.

§1813.

In making the determinations required by this article, the respective public agency shall act in a reasonable manner consistent with the requirements of law to facilitate the voluntary sale, lease, or exchange of water and shall support its determinations by written findings. In any judicial action challenging any determination made under this article the court shall consider all relevant evidence, and the court shall give due consideration to the purposes and policies of this article. In any such case the court shall sustain the determination of the public agency if it finds that the determination is supported by substantial evidence.

§1814.

This article shall apply to only 70 percent of the unused capacity.

§11460

In the construction and operation by the department of any project under the provisions of this part a watershed or area wherein water originates, or an area immediately adjacent thereto which can conveniently be supplied with water therefrom, shall not be deprived by the department directly or indirectly of the prior right to all of the water reasonably required to adequately supply the beneficial needs of the watershed, area, or any of the inhabitants or property owners therein.

§11463

In the construction and operation by the department of any project under the provisions of this part, no exchange of the water of any watershed or area for the water of any other watershed or area may be made by the department unless the water requirements of the watershed or area in which the exchange is made are first and at all times met and satisfied to the extent that the requirements would have been met were the exchange not made, and no right to the use of water shall be gained or lost by reason of any such exchange.

§11128

The limitations prescribed in Section 11460 and 11463 shall also apply to any agency of the State or Federal Government which shall undertake the construction or operation of the project, or any unit thereof, including , besides those specifically described, additional units which are consistent with and which may be constructed, maintained and operated as a part of the project and in furtherance of the single object contemplated by this part.